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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/708,435	03/03/2004	Randy Stratman	65765-0037	2434
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EXAMINER

SPAHN, GAY

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/708,435	Applicant(s) STRATMAN ET AL.	
	Examiner Gay Ann Spahn	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 MAR 2004, 07 NOV 2005, & 19 DEC 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 and 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10 is/are rejected.
- 7) ☒ Claim(s) 1-4 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>17 September 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicants' election without traverse of Group I (claims 1-11, drawn to a physical barrier for an orifice in a panel member) and the Species of Fig. 8 in the reply filed on 19 December 2005 is acknowledged.

Claims 12-20 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention (i.e., Group II, drawn to a method of sealing an orifice in a panel member), there being no allowable generic or linking claim.

Applicant has listed claims 1-7 and 10 as being readable on the elected species. However, the examiner disagrees that claims 5, 6, and 7 read on the elected species. The elected species of Fig. 8 is a physical barrier made up of a patch 14 and a plastic carrier 12 which are joined by traditional vacuum-forming techniques (in contrast to the use of a snap-fit fastener (18) as with the embodiments of the invention shown in Figs. 1A, 1B, 2, 3A, 3B, 4A, 4B, 5A, and 5B). Claims 5-7 all recite "snap-fit fasteners" (18) which are not shown with respect to the embodiments of Figs. 6-8. Therefore, it is the examiner's position that claims 5-7 do not read on the elected species of Fig. 8 and will not be examined.

Claims 5-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species (i.e., the embodiments shown in Figs. 1A, 1B, 2, 3A, 3B, 4A, 4B, 5A, and 5B), there being no allowable generic or linking claim.

Further, since it appears claim 1 is not generic to all species because the recitation that "said patch . . . encapsulates said peripheral edge" only reads on the embodiments shown in Figs. 6-8 and not the embodiments shown in Figs. 1A, 1B, 2, 3A, 3B, 4A, 4B, 5A, and 5B, claims 5-7 will not be rejoined.

The restriction and election of species requirements are still deemed proper and are therefore made FINAL.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 17 September 2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

However, Reference Cite "BA" (the first listed item in the "Foreign Patent Documents" section) has been lined through as not being considered because there does not appear to be a German Reference (i.e., "DE") having a Document No. of 1,354,973 issued to Klaus.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore,

(1) claim 1's recitation of "A physical barrier for an orifice in a panel member, comprising: . . . a patch adapted to adhere to said plastic carrier and the panel member" (emphasis added),

(2) claim 2's recitation of "wherein said patch is configured to seal an interface between said plastic carrier and the orifice upon being heat-activated" (emphasis added),

(3) claim 3's recitation of "wherein a portion of said patch is disposed between said plastic carrier and the panel member to seal the plastic carrier and the orifice upon being heat-activated" (emphasis added),

(4) claims 4's recitation of "wherein said carrier is adapted to be attached to said panel member" (emphasis added),

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because:

(1) Figs. 1A, 1B, 3B, 4B, 5A, and 5B, the squiggle line under reference numeral "10" should be removed and a lead line ending in an arrowhead should be inserted to lead toward the structure of the "physical barrier" (i.e., the use of a reference numeral with a line under it is only appropriate if the reference numeral with the line under it is physically located on the structure it represents);

(2) Figs. 1A, 2, and 5A, the dot-dash line should be changed to a brace as the correct way to show an exploded view;

(3) Fig. 8, the lead line leading from reference numeral "16" representing the "deck" of the carrier "12" should not end at the bottom of patch (14), but should continue downwardly to touch the top of the carrier (12); and

(4) Figs. 6-8, the carrier (12) is shown in cross-sectional view and has cross-hatching representative of metal (see the Manual of Patent Examining Procedure (MPEP) § 608.02(IX) entitled "Drawing Symbols"), but the claims recite that the carrier (12) is plastic.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

(1) Paragraph No. [0019] is incorrect because only the plastic carrier (12) of Fig. 1A is shown in Fig. 6, not the entire physical barrier of Fig. 1B and therefore, Paragraph No. [0019] should be changed to --FIG. 6 is a cross-sectional view of a physical barrier according to another embodiment of the present invention, wherein the plastic carrier of FIG. 1A is shown as being joined to a patch.--;

(2) Paragraph No. [0020] is incorrect because only the plastic carrier (12) of Fig. 3A is shown in Fig. 7, not the entire physical barrier of Fig. 3B and therefore, Paragraph No. [0020] should be changed to --FIG. 7 is a cross-sectional view of a physical barrier

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according to another embodiment of the present invention, wherein the plastic carrier of FIG. 3A is shown as being joined to a patch.--;

(3) Paragraph No. [0021] is incorrect because only the plastic carrier (12) of Fig. 5A is shown in Fig. 6, not the entire physical barrier of Fig. 5B and therefore, Paragraph No. [0021] should be changed to --FIG. 9 is a cross-sectional view of a physical barrier according to another embodiment of the present invention, wherein the plastic carrier of FIG. 5A is shown as being joined to a patch.--;

(4) line 3 of Paragraph No. [0022], there is no Fig. 1 and therefore, "FIG. 1" should be changed to --FIGS. 1A and 1B--;

(5) line 1 of Paragraph No. [0023], there is no Fig. 1 and therefore, "FIG. 1" should be changed to --FIGS. 1A and 1B--;

(6) line 1 of Paragraph No. [0024], there is no Fig. 3 or Fig. 4 and therefore, "FIGS. 2, 3 and 4" should be changed to --FIGS. 2, 3A, 3B, 4A, and 4B--;

(7) line 3 of Paragraph No. [0026], there is no Fig. 1 or Fig. 5 and therefore, "FIGS. 1-5" should be changed to --FIGS. 1A, 1B, 2, 3A, 3B, 4A, 4B, 5A, and 5B--;

(8) line 1 of Paragraph No. [0027], there is no Fig. 1, Fig. 4 or Fig. 5 and therefore, "FIGS. 1, 4 and 5" should be changed to --FIGS. 1A, 1B, 4A, 4B, 5A, and 5B--;

(9) line 4 of Paragraph No. [0027], the word "place" should be changed to --placed--;

(10) line 5 of Paragraph No. [0027], after the word "to", insert --ensure--;

(11) line 1 of Paragraph No. [0028], there is no Fig. 3 or Fig. 4 and therefore, "FIGS. 3 and 4" should be changed to --FIGS. 3A, 3B, 4A, and 4B--;

(12) line 1 of Paragraph No. [0029], there is no Fig. 1 or Fig. 5 and therefore, "FIGS. 1-5" should be changed to --FIGS. 1A, 1B, 2, 3A, 3B, 4A, 4B, 5A, and 5B--;

(13) line 4 of Paragraph No. [0029], there is no Fig. 1 or Fig. 5 and therefore, "FIGS. 1-5" should be changed to --FIGS. 1A, 1B, 2, 3A, 3B, 4A, 4B, 5A, and 5B--;

(14) line 4 of Paragraph No. [0029], there is no Fig. 1 and therefore, "FIG. 1" should be changed to --FIGS. 1A and 1B--;

(15) line 4 of Paragraph No. [0029], there is no Fig. 4 and therefore, "FIGS. 2-4" should be changed to --FIGS. 2, 3A, 3B, 4A, and 4B--; and

(16) line 5 of Paragraph No. [0029], there is no Fig. 5 and therefore, "FIG. 5" should be changed to --FIG. 5A and 5B--.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

Claims 1-4 and 10 are objected to because of the following informalities:

The word "Claims" centered at the top of the claims section before claim 1 should be changed to --We claim:--, --The invention is claimed is:-- or similar (see the Manual

of Patent Examining Procedure (MPEP) § 608.01(m) entitled "Form of Claims", the third full sentence).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 1, the recitation of "A physical barrier for an orifice in a panel member" (emphasis added) and lines 4-5, the recitation of "a patch adapted to adhere to said plastic carrier and the panel member" (emphasis added) is vague, indefinite and confusing because the panel member has not been positively recited and the panel member has not been shown in the drawing figures so that the examiner cannot get a clear understanding of what is meant by the term "panel member" and cannot delineate the metes and bounds of the claim.

Claim 1, line 6-8, the recitation that "said patch is attached to at least a portion of said plastic carrier and encapsulates said peripheral edge" is vague, indefinite, and confusing because Merriam-Webster's Collegiate® Dictionary (Tenth Edition, copyright 1997, published by Merriam-Webster, Incorporated, Springfield, Massachusetts) defines the word "encapsulate" as "to enclose in or as if in a capsule" and the examiner notes

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that the peripheral edge (40) of the carrier (12) shown in Figs. 6-8 is not enclosed in or as if in a capsule because not all sides of the peripheral edge (40) are enclosed within the patch (14)

Claim 2, lines 1-3, the recitation of “wherein said patch is configured to seal an interface between said plastic carrier and the orifice upon being heat-activated” is vague, indefinite, and confusing because the interface (between the plastic carrier and the orifice) and the orifice have not been positively recited and the interface and the orifice have not been shown in the drawing figures so that the examiner cannot get a clear understanding of what is meant by the term “interface” and “orifice” and cannot delineate the metes and bounds of the claim.

Claim 3, lines 1-4, the recitation of “wherein a portion of said patch is disposed between said plastic carrier and the panel member to seal the plastic carrier and the orifice upon being heat-activated” is vague, indefinite, and confusing because the panel member and the orifice have not been positively recited and the panel member and the orifice have not been shown in the drawing figures so that the examiner cannot get a clear understanding of what is meant by the term “panel member” and “orifice” and cannot delineate the metes and bounds of the claim.

Claim 4, lines 1-3, the recitation of “wherein said carrier is adapted to be attached to said panel member” is vague, indefinite, and confusing because the panel member has not been positively recited and the panel member has not been shown in the drawing figures so that the examiner cannot get a clear understanding of what is meant by the term “panel member” and cannot delineate the metes and bounds of the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmitz et al. (U.S. Patent No. 4,588,105).

As to claim 1, Schmitz et al. disclose (see embodiment of Fig. 6) a physical barrier (sealing plug 1) for an orifice (at 31) in a panel member (30), comprising:

a plastic carrier (head portion 2 and flange 2a) having a peripheral edge (end portion of flange 2a);

a patch (3) adapted to adhere to said plastic carrier (2, 2a) and the panel member (30); and

wherein said patch (3) is attached to at least a portion of said plastic carrier (2, 2a) and encapsulates said peripheral edge (end portion of flange 2a).

As to claim 2, Schmitz et al. discloses the physical barrier of claim 1 as discussed above.

The examiner notes that the recitation of “wherein said patch is configured to seal an interface between said plastic carrier and the orifice upon being heat-activated” only recites intended assembly. Neither the panel member nor its orifice are positively recited and therefore, do not form a part of the invention. Only the seal forms a part of the invention. Further, the recitation of “upon being heat-activated” is a method

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limitation which is not given any patentable weight in an apparatus/product/article of manufacture claim.

Nevertheless, Schmitz et al. disclose that the patch (3) is configured to seal an interface between said plastic carrier (2, 2a) and the orifice (31) of the panel member (30) upon being heat-activated (see Abstract, col. 3, lines 31-35, and col. 4, lines 17-22).

As to claim 3, Schmitz et al. disclose the physical barrier of claim 2 as discussed above.

The examiner notes that the recitation of “wherein a portion of said patch is disposed between said plastic carrier and the panel member to seal the plastic carrier and the orifice upon being heat-activated” only recites intended assembly. Neither the panel member nor its orifice are positively recited and therefore, do not form a part of the invention. Only the seal forms a part of the invention. Further, the recitation of “upon being heat-activated” is a method limitation which is not given any patentable weight in an apparatus/product/article of manufacture claim.

Nevertheless, Schmitz et al. disclose that a portion of said patch (3) is disposed between said plastic carrier (2, 2a) and the panel member (30) to seal the plastic carrier (2, 2a) and the orifice (31) upon being heat-activated (see Abstract, col. 3, lines 31-35, and col. 4, lines 17-22).

As to claim 4, Schmitz et al. disclose the physical barrier of claim 1 as discussed above.

The examiner notes that the recitation of "wherein said carrier is adapted to be attached to said panel member" only recites intended assembly. The panel member is not positively recited and therefore, does not form a part of the invention. Only the seal forms a part of the invention.

Nevertheless, Schmitz et al. disclose that the carrier (2, 2a) is adapted to be attached to said panel member (30) via the patch (3) upon heat-activation (see Abstract, col. 3, lines 31-35, and col. 4, lines 17-22).

Allowable Subject Matter

Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various patents of interest are: U.S. Patent No. 3,557,995 to Mirasol, Jr. et al.; U.S. Patent Application Publication No. 2003/0062693 to Benkel et al.; and U.S. Patent No. 6,007,136 to Zittwitz et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-

7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

^{GAS}
Gay Ann Spahn, Patent Examiner
January 17, 2006



MICHAEL SAFAV
PRIMARY EXAMINER
ART UNIT 3673